

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
Parcel Select
Parcel Select Contract 12

Docket No. MC2016-37

Competitive Product Prices
Parcel Select Contract 12 (MC2016-37)
Negotiated Service Agreement

Docket No. CP2016-46

ORDER ADDING PARCEL SELECT CONTRACT
12 TO THE COMPETITIVE PRODUCT LIST

(Issued December 24, 2015)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select Contract 12 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Parcel Select Contract 12 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 15, 2015 (Request).

II. BACKGROUND

On December 15, 2015, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Parcel Select Contract 12 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. Request, Attachment F.²

The contract is intended to take effect two business days following the day on which the Commission issues all necessary regulatory approval. Request, Attachment B at 6. It is set to expire January 1, 2019. *Id.*

On December 16, 2015, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

² In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

³ Order No. 2880, Notice and Order Concerning the Addition of Parcel Select Contract 12 to the Competitive Product List, December 16, 2015.

III. COMMENTS

The Public Representative filed comments on December 22, 2015.⁴ No other interested person filed comments. The Public Representative reviewed the instant contract, the Statement of Supporting Justification, certificate of compliance, and non-public financial data accompanying the request. PR Comments at 3. He concludes that Parcel Select Contract 12 should be categorized as a competitive product and added to the competitive product list. *Id.* He further concludes that, based on the financial workpapers filed by the Postal Service, it appears that the contract is expected to generate sufficient revenues to cover costs in the first contract year and thereby satisfy the requirements of 39 U.S.C. § 3633(a). *Id.*

The Public Representative also comments that the Postal Service provides no data to demonstrate the contract will comply with the requirements of 39 U.S.C. § 3633 (a) during the second and third years of the contract. *Id.* at 2. He asserts that “[t]his concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.” *Id.* He notes that the Commission will have an opportunity to conduct an annual compliance review in its Annual Compliance Determination. *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, and the Public Representative’s comments.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request include assigning Parcel Select Contract 12 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine

⁴ Public Representative Comments on Request of the United States Postal Service to Add Parcel Select Contract 12 to Competitive Product List, December 22, 2015 (PR Comments).

that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Parcel Select Contract 12 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Parcel Select Contract 12 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because the Commission finds Parcel Select Contract 12 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, the Commission also finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Notice requirements. Section I.F.1 of the contract contains a price adjustment provision that adjusts contract rates during subsequent contract years based on a pre-determined formula that is tied to objective, external events. See Request, Attachment B at 3. Those contract price adjustments should not impact the likelihood that the rates will cover attributable costs during the subsequent contract years because the cost

coverage is sufficiently high in the first year. Section I.F.2. of the contract provides, however, that:

In the event there is a contract price increase under Section I.F.1 the Postal Service may elect to charge Customer a price for Contract Packages that is less than the preceding Contract Year's prices, plus the most recent (as of the anniversary date) published percentage increase in those prices for each applicable weight. The applicable contract price for each applicable weight cell would be reflected in Table 2, for the subsequent Contract Year.

Id.

Pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, the Postal Service must file notice of any adjustment to a rate or class not of general applicability at least 15 days before the rate takes effect. The inclusion of section I.F.2 in the contract as filed is not tantamount to pre-approval by the Commission of the elective rates the Postal Service may charge in lieu of rates derived pursuant to the formula set forth in section I.F.1 of the initial contract. Rates charged pursuant to section 1.F.1 do not require a separate notice filed with the Commission, whereas rates charged pursuant to section 1.F.2 do.⁵

Other considerations. By its terms, the contract becomes effective two business days after the date that the Commission issues all necessary regulatory approval. Request, Attachment B at 6. The contract is scheduled to expire January 1, 2019, unless among other things, either party terminates the contract with written notice or it is renewed or extended for two years by mutual agreement.⁶

The contract also contains a provision that allows the parties to extend the contract for up to two 90-day periods if a successor agreement is being prepared and

⁵ See Docket No. CP2012-40, Order No. 1840, Order Approving Amendment to Parcel Select Contract 3 Negotiated Service Agreement, September 27, 2013.

⁶ *Id.* Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

the Commission is notified within at least seven days of the contract expiring.⁷ The Commission finds the two potential 90-day extension periods are reasonable because the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Parcel Select Contract 12 as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Parcel Select Contract 12 (MC2016-37 and CP2016-46) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.

⁷ *Id.* Notwithstanding the wording of the contract, it is the Commission's understanding that the Postal Service intends to provide notice of an extension at least one week prior to a contract's expiration. Advance notice of at least one week is consistent with the standard set forth in Order No. 1773. Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2; Docket No. CP2009-38, Order No. 1523, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2.

3. As discussed in the body of this Order, changes in rates pursuant to a negotiated service agreement that are not made according to a pre-determined schedule and a pre-determined formula based on objective, external factors must be noticed with the Commission and filed at least 15 days in advance of the effective date of such rates.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2016-37 and CP2016-46. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements* **Domestic***

Parcel Select Contract 12

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Domestic*

Parcel Select Contract 12

2500 Negotiated Service Agreements

2505 Domestic

2505.8 Parcel Select Contracts

- Parcel Select Contract 12

Baseline Reference

Docket Nos. MC2016-37 and CP2016-46

PRC Order No. 2927, December 24, 2015

Included Agreements

CP2016-46, expires January 1, 2019
